



Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Date: September 10, 2018

Time: 9AM

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, James Swan (*Insurer, Salt Lake County*) xNancy Frandsen (*Insurer, Salt Lake County*)
xVice Chair, Alison McCoy (*Agency, Tooele County*) xDavid Moore (*Agency, Salt Lake County*)
xRandy Smart (*Public Member, Salt Lake County*) xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* xTracy Klausmeier, *P&C Dir.*
xRandy Overstreet, *Licensing Dir.* Adam Martin, *Examiner* xSteve Gooch, *PIO Recorder*

PUBLIC

Tim Grubb Frank Medina Jeff Wiener [PHONE]
Carol Yamamoto [PHONE] Matt Ryden [PHONE] Joseph McPhie [PHONE]
Mark Webber [PHONE]

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (9:01 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - James requests a change: Under Hot Topics, the 2nd bullet from the bottom should be "and it was considered a potential violation by the UID."
 - **Motion by Alison to adopt minutes as revised. Seconded by David. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - There were 5 new agencies, 1 of which expired August 31. James asks if they've been contacted and are in the process of renewing. Randy O. says they missed the renewal date and haven't been reinstated yet. Reinstatement can be done for up to 1 year, but they have not submitted an application yet.
 - Nancy asks if the email notice goes out on the lapse date or renewal date. Randy O. says it's on the lapse date. James asks if we can change the system so they get an update before they expire. They could be issuing policies without knowing their licenses are expired. Randy O. says he can talk to Sircon to see what they can do for agencies at least. He notes that there's a 90-day notice of renewal date, then reminders every 30 days.
 - One agency lapsed in July and was reinstated in August. He'll check to see when emails go out and if we can get one sent earlier.
 - There were 12 new individual licenses, many renewals, 7 lapses and 1 reinstated.
 - Randy asks about the expiration date column and why its dates are different from the license dates. It's because agent licenses must be renewed every two years at the end of their birth month. For agencies, it's the end of the month in which their license was issued. If someone reinstates

- Any action taken as a result of the closed portion of the meeting must be taken in the open meeting, so the TEC would need to exit the closed meeting and re-enter the open meeting to take action.
- Commissioner Kiser gives the example of Gary Ott, the former Salt Lake county recorder. In his case, allegations of his mental health were in the newspapers for a long time. If the county wanted to go into a closed session, they could, but everything that would have been discussed in a closed session was already in the papers. Would they need to go into a closed meeting if everything was public knowledge? Perri states the Open and Public Meetings Act says the commission does not need to go into a closed session. Randy says there may be a reason to go into a closed session anyway. Perri says you may learn more in a closed session than is in the media. She suggests going into a closed session any time someone's health or mental health is at issue.
- Nancy says the Real Estate Commission goes into a closed session pretty much every month. Perri says she believes that's because they're deliberating on issues. They hear cases in the open meeting, then go into a closed meeting/executive session to deliberate. Nancy says she thinks they do it to give privacy to the person who's the focus of the issue.
- Perri says the Commission must verify that the only topics discussed during the closed meeting were the topics that the meeting was closed to discuss. The closed session must be taped or have detailed minutes taken, but those records are kept confidential.
- Closed sessions are never required, but there may be reasons to have them.
- No final decisions may be made in a closed session.
- If the court finds that a public body has violated the Open and Public Meetings Act, it may declare that the action taken at the meeting is void, may order the body to comply with the statute, and may order the body to pay the opposing party's attorney's fees and release the minutes from the closed portion of the meeting.
- **Update on 2018 Goals / James**
 - ULTA report / James
 - ULTA is appreciative of the UID's willingness to discuss issues and get them fixed.
 - They're gearing up for the legislative session and thinking about things that might improve the industry.
 - Real Estate Commission report / Nancy
 - Nancy didn't attend because it was the same morning as the annual insurance exam review that she attended with Alison.
- **New Business**
- **Old Business**
 - Changes to R592-10 / James
 - At the last meeting, there was discussion about how to address R592-10-5. One idea was to delete (1)(c), but there were concerns that the change would have other statutory effects. James looked into it and he doesn't think deleting (1)(c) by itself would cause any conflicts. There are other places in R590 and R592 that require reporting of changes in ownership. He says it appears that reporting a change in a manager is superfluous.
 - James thinks taking out (1)(c) would be a minor and beneficial change. Reed says the Department agrees with James' assessment.
 - **Motion by David to open R592-10-5 to delete (1)(c). Seconded by Nancy. Motion passes 5-0.**
 - Steve will send proposed changes to James and Alison for approval, then will file it before the filing period closes.
- **Other Business**
- **Hot Topics**
 - Minutes
 - Randy O. notes that the 6th bullet of R592-10 in the August minutes references R590-204, but there is no such rule. James says it appears to be a statutory reference to 31A-23a-204.
 - **Motion by Alison to fix that reference. Seconded by Randy. Motion passes 5-0.**

- Minimum E&O / David
 - David would like to have minimum E&O added back to the agenda for discussion.
 - Under 31A-23a-204(2) it says licensees need to have fidelity bonds or financial protection. The industry has decided it's an "either/or" statement because they cover two different areas. Does the UID want it to be "either/or" or "both"? The industry needs to know because some states require both and some require only a surety bond. Fidelities are expensive and can be difficult to get. E&O is good, but coverage can be all over the place. Is \$250,000 sufficient for the industry, or should it be based on another amount? Underwriters do a great job of requiring more E&O, but there are a lot of things that aren't covered. What's the scope of the protection? Should cybercrime be included? He notes that comments were made in past months about the industry self-regulating, but retroactive dates are so critical that they should maybe be legislated. Are exclusions important? He thinks we need to have legislative or rule-based regulation. Self-regulation only goes so far.
 - James requests that David provide data to back up his position that consumers are being harmed by gaps in liability coverage.
 - Nancy notes that title is only one of the lines that the UID regulates. Does the UID look at E&O across other lines every so often? Tracy says policy language is up to the insurer who is issuing the policy. The UID stays away from saying what coverages must be in a policy because that can cause pushback from the insurer and they may quit writing altogether. Surety language is drafted by a national industry organization that is similar to the ALTA.
 - Commissioner Kiser says if there isn't a widespread problem, there may not be a reason to react.
 - David would like to discuss whether we need to have the UID make changes or make a rule or pass it to the legislature.
 - James asks the TEC if there's support to continue the discussion. He doesn't think further discussion is necessary, and feels like it's tough to legislate without data to support it. Nancy says they just learned that underwriters set the changes, and she doesn't think the UID would deal with dollar amounts. She asks if David just wants to nail down the "either/or" question. Reed says the statute is pretty clear that it's an "or". Alison thinks it comes down to how you want to run your business and how much risk you're willing and able to take on.
 - David says the problem is that agents are dealing with other agents and he doesn't want to have problems with theft or agents going out of business. We need to make sure that who we're dealing with has the same standards we do.
 - Randy says he doesn't know that it would hurt to have one more discussion to put the topic to bed, but he doesn't think the TEC will be able to legislate policy language.
 - James says it sounds like there are 2 commission members who want to further discussion and 3 who want to cap it, and the UID isn't necessarily in favor of legislating terms of insurance. He doesn't think there's much value in further discussion.
 - Commissioner Kiser personally thinks it's a private contract, but if there's data to show that there's a problem, that could change things. He voted against the NAIC's cybersecurity model law because he thinks it's in a company's best interest to solve problems themselves. The NAIC law reaches into third-party contracts and agency activities. He admires David's willingness to fight for what he wants and he welcomes the discussion.
 - David says he will do some research and can put it on a future agenda after he's collected the data.
 - Commissioner Kiser notes that, as a former legislator, a constituent talking to their legislator is often the best path to getting a law changed.
 - Nancy says underwriters often feel like Big Brother to agents, but the industry takes care of itself. She had some agents who refused to get E&O until, in the past few years, lenders wouldn't fund them until they got E&O coverage.
 - Randy says he supports further discussion because it would be helpful for him to know the issues the TEC is dealing with, since he's not in the industry every day.

Executive Session (None)

- **Adjourn** (10:12 AM)
 - **Motion by Nancy to adjourn. Seconded by Alison. Motion passes 5-0.**
- **Next Meeting: **October 1**, 2018** — Copper Room

2018 Meeting Schedule in Copper Room

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|------------------|---------------------------|-------------------|------------------|-------------------|-------------------|
| Jan 8 | Feb 12 (Aspen) | Mar 12 | Apr 9 | May 14 | Jun 11 |
| Jul 9 | Aug 13 | Sept 10 | Oct 1 | Nov 5 | Dec 10 |